

EXHIBIT Y

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE MARIANA R. PFAELZER JUDGE PRESIDING

CENTOCOR, INC.,

Plaintiff,

Vs.

GENENTECH, INC., ET AL.,

Defendant.

No. CV 08-3573-MRP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARKMAN HEARING

LOS ANGELES, CALIFORNIA

TUESDAY, MAY 12, 2009

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1 the correct construction based on the intrinsic record, as I
2 see it. In construing the term --

3 THE COURT: How does it bear, though, this is
4 not -- this is a side question in a claim construction
5 hearing. How does it bear on any infringement issue or any
6 validity issue?

7 MR. PALS: I don't believe it bears on any
8 infringement issues, Your Honor. Again, I haven't seen
9 invalidity contentions from them articulated in a way that
10 would have bearing, which is why --

11 THE COURT: Well, then it is to the Court and it
12 was when I have read this several times the kind of magical
13 mystery hour. I don't know why I'm doing this. I know why
14 I'm doing the integration point. Co-expression and all of
15 that is the essence of what I've been asked to do before, but
16 I don't know why I'm doing this one.

17 MR. PALS: The -- Your Honor, I understand.

18 There is -- my assumption is that there is some
19 prior art reason that they point to. I believe that the
20 Patent Office has made clear that the prior art that was
21 considered in the reexamination, which, to my knowledge, is
22 everything, is different for a host of reasons from the
23 patented claim.

24 So I don't see it should have any bearing on that
25 issue, but I assume that they have some reason they're

1 pressing for their position.

2 THE COURT: This was -- I agree with you about what
3 you just said. This was really a significant reexamination,
4 very significant. I am now unwilling to take these words and
5 construe them if they don't need to be construed. I'm not so
6 unwilling that I'm not listening to the argument.

7 MR. PALS: I understand, Your Honor.

8 THE COURT: Maybe I better hear from her, and then
9 you can answer what she says.

10 MR. PALS: Very good.

11 THE COURT: You -- I hope I made that sufficiently
12 clear.

13 MS. ELDERKIN: You did, Your Honor. It sounds like
14 I have some explaining to do.

15 THE COURT: That's fine.

16 MS. ELDERKIN: Bear with me while I see if I can
17 get this started up again. Here we go.

18 I'm going to explain to Your Honor -- hope to
19 explain to you why this is an important issue why we are
20 asking Your Honor to consider this issue despite what the
21 Patent Office said. I'm going to skip right to the slide,
22 which is Slide 13.

23 This is a statement in the specification of the
24 Cabilly patent. It expressly indicates that the inventor
25 contemplated that the immunoglobulin molecules that can be